

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

LOCKARD AIRCRAFT SALES CO.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 13-CV-79-FHS-KEW
)	
ULYSSES ASSET SUB II, LLC f/k/a T6)	
UNISON SITE MANAGEMENT, LLC,)	
)	
Defendant.)	

OPINION AND ORDER

This matter comes on for consideration of the Defendant’s Objection to the Magistrate Judge’s Order lifting the stay in this matter (Dkt. # 16). Defendant argues these claims are subject to arbitration, but this Court does not have authority to order arbitration based upon a forum selection clause contained within the arbitration agreement entered into between the parties. Plaintiff responds by arguing it is the Defendant who has to commence any arbitration proceeding (Dkt. # 20). Both parties seem eager to have this Court construe the agreement and tell the other side that they are required to initiate arbitration proceedings.

The Net Profits Agreement seems fairly straightforward. In the event of a dispute, it sets forth a dispute resolution process which includes:

- (1) upon a party’s written notice of dispute to the other party, an authorized representative of the Site Owner and Unison shall, **through good faith negotiation**, attempt to settle a written resolution within thirty (30) days and (2) if such negotiation attempts fail, the dispute shall be submitted **by the parties to a mutually agreed upon arbitration** for a binding and final arbitration decision in accordance with the rules of the American Arbitration Association (“AAA”) and using the Federal Rules of Evidence and Civil Procedure.

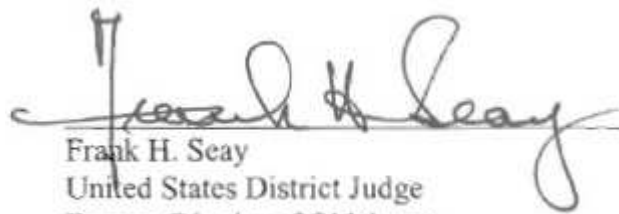
Dkt. # 5-2, at p. 2, ¶ 6 (Emphasis added). The Wireless Communication Easement and Assignment Agreement contains a similar dispute resolution provision. *See*, Dkt. # 5-3, at pp. 4-5, ¶ 16.

This Court finds the filing of a lawsuit in Okmulgee County District Court and the service of the same upon the defendant acted as the plaintiff's written notice of a dispute. The parties should, therefore, proceed to resolve this dispute in accordance with the agreements which they entered into.

This Court will stay this matter for a period of ninety (90) days in order to allow the parties an opportunity to negotiate in good faith and/or submit this matter to mutually agreed upon arbitration. The parties are hereby directed to file a joint status report advising the Court of the progress being made to resolve this matter no later than March 10, 2014.

It is, therefore, the Order of this Court that this matter is again stayed for a period not to exceed ninety (90) days, or until April 7, 2014.

It is so ordered this 6th day of January, 2014.



Frank H. Seay
United States District Judge
Eastern District of Oklahoma